

February 21, 2006

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Federal Communications Commission  
Office of Secretary

**VIA COURIER**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
c/o Natek  
236 Massachusetts Avenue, N.E., Suite 110  
Washington, DC 20002

In re: *Closed Captioning and Video Description of Video Programming –  
Implementation of Section 305 of the Telecommunications Act of 1996 – Video  
Programming Accessibility*

CGB-CC-0039 – Opposition of Telecommunications for the Deaf and Hard of  
Hearing, Inc., National Association of the Deaf, The Deaf and Hard of Hearing  
Consumer Advocacy Network, and Hearing Loss Association of America to the  
Petition for Exemption from Closed Captioning Requirements Filed by First  
Baptist Lavaca Church

Dear Ms. Dortch:

Telecommunications for the Deaf and Hard of Hearing, Inc., National Association of the Deaf, The Deaf and Hard of Hearing Consumer Advocacy Network, and Hearing Loss Association of America hereby submit for filing in the above-captioned proceeding their opposition to the petition for exemption from the closed captioning requirements filed by First Baptist Lavaca Church.

An original and two (2) copies of this filing are enclosed. Please date-stamp the enclosed extra copy of this filing and return it in the self-addressed envelope provided. Should you have any questions concerning this matter, please do not hesitate to contact us.

Respectfully submitted,



Paul O. Gagnier  
Troy F. Tanner

Their Counsel

Enclosure

Marlene H. Dortch, Secretary

February 21, 2006

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Mr. Claude L. Stout (TDI)

Mr. Kelby N. Brick, Esq. (NAD)

Ms. Cheryl Heppner (DHHCAN)

Ms. Brenda Battat (HLAA)

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Closed Captioning and Video Description of Video Programming	)	
	)	CGB-CC-0039
Implementation of Section 305 of the Telecommunications Act of 1996 --	)	
	)	
Video Programming Accessibility	)	

**OPPOSITION OF TELECOMMUNICATIONS FOR THE DEAF AND HARD OF  
HEARING, INC., NATIONAL ASSOCIATION OF THE DEAF, THE DEAF AND HARD  
OF HEARING CONSUMER ADVOCACY NETWORK, AND THE HEARING LOSS  
ASSOCIATION OF AMERICA TO  
THE PETITION FOR EXEMPTION FROM CLOSED CAPTIONING REQUIREMENTS  
FILED BY FIRST BAPTIST LAVACA CHURCH**

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Dated: February 21, 2006

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**OPPOSITION TO THE PETITION FOR EXEMPTION FROM CLOSED  
CAPTIONING REQUIREMENTS FILED BY FIRST BAPTIST LAVACA CHURCH**

**I.     INTRODUCTION**

Telecommunications for the Deaf and Hard of Hearing, Inc., the National Association of the Deaf, the Deaf and Hard of Hearing Consumer Advocacy Network, and the Hearing Loss Association of America (together, “Commenters”), by their undersigned counsel, hereby submit their opposition to the petition for an exemption (“Petition”) from the Commission’s closed captioning requirements for a weekly video program filed by First Baptist Lavaca Church (“Petitioner”), the program’s producer.

Telecommunications for the Deaf and Hard of Hearing, Inc. (“TDI”) is a national advocacy organization that seeks to promote equal access in telecommunications and media for the 28 million Americans who are deaf, hard-of-hearing, late-deafened, or deaf-blind, so that they may enjoy the opportunities and benefits of the telecommunications revolution to which they are entitled. TDI believes that only by ensuring equal access for all Americans will society benefit from the myriad skills and talents of persons with disabilities.

Established in 1880, the National Association of the Deaf (“NAD”) is the nation's oldest and largest nonprofit organization safeguarding the accessibility and civil rights of 28 million deaf and hard of hearing Americans across a broad range of areas including education,

employment, health care, and telecommunications. Primary areas of focus include grassroots advocacy and empowerment, policy development and research, legal assistance, captioned media, information and publications, and youth leadership.

The Deaf and Hard of Hearing Consumer Advocacy Network (“DHHCAN”), established in 1993, serves as the national coalition of organizations<sup>1</sup> representing the interests of deaf and/or hard of hearing citizens in public policy and legislative issues relating to rights, quality of life, equal access, and self-representation. DHHCAN also provides a forum for proactive discussion on issues of importance and movement toward universal, barrier-free access with emphasis on quality, certification, and standards.

The Hearing Loss Association of America (“HLAA”) is the nation's foremost consumer organization representing people with hearing loss. HLAA's national support network includes an office in the Washington D.C. area, 13 state organizations, and 250 local chapters. The HLAA mission is to open the world of communication to people with hearing loss through information, education, advocacy, and support. HLAA provides cutting edge information to consumers, professionals and family members through their website, [www.hearingloss.org](http://www.hearingloss.org), their award –winning publication, *Hearing Loss*, and hearing accessible national and regional conventions. HLAA impacts accessibility, public policy, research, public awareness, and service delivery related to hearing loss on a national and global level.

Commenters fully support the creation of programming to address the diversity of interests and views of the American public, including programs that derive their inspiration from

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<sup>1</sup>/ The member organizations of DHHCAN include the American Association of the Deaf-Blind (AADB), the American Deafness and Rehabilitation Association (ADARA), the Association of Late-Deafened Adults (ALDA), the American Society for Deaf Children (ASDC), the Conference of Educational Administrators of Schools and Programs for the Deaf (CEASD), Communication Service for the Deaf (CSD), Deaf Seniors of America (DSA), Gallaudet University, Gallaudet University Alumni Association (GUAA), National Association of the Deaf (NAD), National Black Deaf Advocates (NBDA), National Catholic Office of the Deaf (NCOD), Registry of Interpreters for the Deaf (RID), Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), USA Deaf Sports Federation (USADSF), and The Caption Center/WGBH.

addressing religious and spiritual matters. Commenters respectfully submit, however, that the Petition does not meet the statutory requirements necessary to support an exemption from the closed captioning rules or Petitioner's contention that compliance with the closed captioning requirements would impose an undue burden.<sup>2</sup> As set forth below, Petitioner has provided insufficient information to establish that the legal standard for granting the Petition has been met. Petitioner also has failed to establish that the program in question qualifies for an exemption under Section 79.1(d)(8) of the Commission's Rules. Commenters therefore respectfully oppose grant of the Petition.

## **II. THE LEGAL STANDARD FOR GRANTING A PETITION FOR EXEMPTION**

Section 713 of the Communications Act of 1934, as amended, generally requires that video programming be closed captioned, regardless of distribution technologies, to ensure that it is accessible to persons with hearing disabilities.<sup>3</sup> The Commission has the authority to grant a petition for an exemption from the closed captioning requirements upon a showing that the requirements would impose an undue burden on the video programming provider or video owner.<sup>4</sup> Congress defined "undue burden" to mean "significant difficulty or expense."<sup>5</sup>

A petition seeking a waiver of the captioning rules must demonstrate that compliance would result in an undue burden within the meaning of Section 713(e) and Section 79.1(f) of the Commission's rules.<sup>6</sup> Section 713 requires the Commission to consider four factors when determining whether the closed captioning requirements will impose an undue burden: (1) the nature and cost of the closed captions for the programming; (2) the impact on the operation of

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<sup>2/</sup> 47 U.S.C. § 613(e).

<sup>3/</sup> *Id.*

<sup>4/</sup> *Id.*

<sup>5/</sup> *Id.*

<sup>6/</sup> 47 U.S.C. § 613(e); 47 C.F.R. § 79.1(f).

the provider or program owner; (3) the financial resources of the provider or program owner; and (4) the type of operations of the provider or program owner.<sup>7</sup>

Section 79.1(f) of the Commission's rules sets forth the Commission's procedures for seeking an exemption from the closed captioning requirements on the basis that compliance would impose an undue burden.<sup>8</sup> A petition for an exemption from the closed captioning requirements must be supported by sufficient evidence to demonstrate that compliance with the requirements would cause an undue burden.<sup>9</sup> Such petition must contain a detailed, full showing, supported by affidavit, of any facts or considerations relied on by the petitioner.<sup>10</sup> It must also describe any available alternatives that might constitute a reasonable substitute for the captioning requirements.<sup>11</sup>

### **III. PETITIONER HAS PRESENTED INSUFFICIENT INFORMATION TO DEMONSTRATE THAT COMPLIANCE WITH THE CAPTIONING REQUIREMENT WOULD IMPOSE AN UNDUE BURDEN**

Petitioner requests an exemption from the closed captioning requirements for its video program, asserting that compliance would impose an undue burden on Petitioner.<sup>12</sup> In particular, the Petitioner argues that compliance would add unaffordable production costs and that it does not have the human resources available to meet captioning requirements.<sup>13</sup> As Commenters discuss below, the Petition offers insufficient evidence to demonstrate that compliance would impose an undue burden under the four statutory exemption factors. The Petition therefore does not meet the legal standard for granting a request for exemption of the closed captioning rules.

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<sup>7</sup>/ *Id.*

<sup>8</sup>/ 47 C.F.R. § 79.1(f).

<sup>9</sup>/ *Id.* § 79.1(f)(2).

<sup>10</sup>/ *Id.* § 79.1(f)(9).

<sup>11</sup>/ *Id.* § 79.1(f)(3).

<sup>12</sup>/ Petition at p.1.

<sup>13</sup>/ *Id.*



Petitioner also appears to argue that it qualifies for an exemption pursuant to Section 79.1(d)(8) of the Commission's rules, which pertains to locally produced programming.<sup>14</sup> Although Petitioner does not expressly cite rule 79.1(d)(8), it appears to invoke this rule because it states that its program is aired "locally" and that it had no intention to extend its viewing base.<sup>15</sup> However, Petitioner cannot qualify for the local programming exemption because it is not a "video programming distributor."<sup>16</sup>

**A. Exemption Criteria Under Section 79.1(f)(2)**

As more fully discussed below, Commenters respectfully submit that the Petition is not supported by sufficient evidence to demonstrate that compliance with the closed captioning requirements would impose an undue burden upon Petitioner as required by the statutory factors set forth under Section 79.1(f)(2) of the Commission's rules.<sup>17</sup>

First factor: The nature and cost of the closed captions. In judging the sufficiency of information filed to support a claim that the cost of implementing closed captioning will impose an undue burden, the Commission looks to whether the petitioner:

- (1) sought competitive pricing from multiple sources;
- (2) submitted copies of the correspondence received from such captioning companies, indicating a range of quotes;
- (3) provided details regarding its financial resources; and
- (4) sought any means to recoup the cost of closed captioning, such as through grants or sponsorships.<sup>18</sup>

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<sup>14/</sup> 47 C.F.R. § 79.1(d)(8).

<sup>15/</sup> Petition at p. 1.

<sup>16/</sup> 47 C.F.R. § 79.1(d)(8).

<sup>17/</sup> 47 C.F.R. § 79.1(f)(2).

<sup>18/</sup> *Outland Sports, Inc., Video Programming Accessibility, Petition for Waiver of Closed Captioning Requirements*, 16 FCC Rcd 13605 (2001) ("Outland Sports") (advising that entities seeking a waiver of the captioning requirements seek cost quotes from multiple sources and provide correspondence evidencing the quotes obtained, provide detailed financial information, and discuss whether any efforts were made to recoup the cost of closed captioning). *See also The Wild Outdoors, Video Programming Accessibility, Petition for Waiver of Closed Captioning Requirements*, 16 FCC Rcd 13611 (2001) (reviewing sufficiency of information provided with respect to the four factors).

Moreover, the Commission has determined that petitioners must make an effort to solicit captioning assistance from the distributors of its programming.<sup>19</sup> Failure to provide the foregoing information and to establish that the Petitioner pursued other possible means of gaining captioning hinders the Commission's assessment of the impact of the cost of captioning on Petitioner.<sup>20</sup>

Petitioner states that it considered three options to provide captioning: hiring additional staff, purchasing captioning software, and sending the program to an outside source for captioning.<sup>21</sup> According to Petitioner, hiring additional staff is not an option and captioning software would be too expensive and too difficult to learn.<sup>22</sup> Petitioner also states that third party captioning services, quoted at \$450-600 per week, would create a "serious hardship."<sup>23</sup> Commenters recognize that Petitioner has perused different means to obtain captioning, however, the rules require petitioner to seek "competitive pricing from multiple sources." Here, only one provider of captioning service was consulted. Petitioner must show that it consulted more than one captioning provider in order to ensure its stated prices are "competitive." Further, Petitioner provided no documentation that supports its stated quote of \$450-600 per week. Petitioner has provided the Commission with no evidence, other than its unsubstantiated assertions, of the costs associated with each of the listed options. In sum, Petitioner has failed to demonstrate that it has sought competitive pricing from multiple sources.

Petitioner, moreover, did not provide sufficient information regarding the financial resources upon which it relies to produce its video program. Petitioner states that the program's financial base comes from volunteer donors and local business, and that no income is generated

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<sup>19</sup>/ *Implementation of Section 305 of the Telecommunications Act of 1996 – Video Programming Accessibility*, 13 FCC Rcd 3272, 3366 (1997).

<sup>20</sup>/ *Outland Sports*, ¶ 7.

<sup>21</sup>/ Petition at 1.

<sup>22</sup>/ *Id.*

<sup>23</sup>/ *Id.*

from the broadcast as the result of product sales or soliciting support funds.<sup>24</sup> Petitioner also provides an unofficial 2004 financial statement to support its contention that it cannot afford captioning.<sup>25</sup> The information provided is not detailed enough to allow the Commission to make an informed decision. Petitioner's unofficial balance sheet for 2004 separates out income and expenses by month. The balance sheet shows Petitioner's church had annual income of \$1,501,733.64 and expenses of the exact same amount.<sup>26</sup> This is a substantial sum of money, from which the annual cost of captioning might be recouped via simple budget adjustments. Without more detail, there is no way for the Commission to know how the money is spent and whether budgeting adjustments are a viable option. Petitioner also does not provide any information regarding the cost of the program. Lacking such information, it is impossible to tell what percentage of the church's resources are spent on providing the program.

Finally, Petitioner's efforts to obtain captioning assistance through alternative sources, such as through grants and sponsorships, or from a distributor, do not go far enough to meet the Commission's standards. Petitioner states that it sought assistance from its distributor, KHBS.<sup>27</sup> KHBS offered temporary captioning solution at \$200/week, or \$10,400 annually.<sup>28</sup> Petitioner claims that this solution would also be prohibitively expensive.<sup>29</sup> Commenters appreciate Petitioner's attempts to obtain assistance from its distributor. However, the inclusion of this information only raises more questions about why Petitioner, with an annual income of approximately 1.5 million dollars, cannot afford \$10,400 for captioning service. More detailed information on Petitioner's financial resources is needed to substantiate this claim. Furthermore, Petitioner offers no evidence demonstrating that it sought to recoup the cost of captioning via

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<sup>24/</sup> *Id.* at 1-2.

<sup>25/</sup> *Id.*

<sup>26/</sup> Petitioner balance sheet.

<sup>27/</sup> Petition at 2.

<sup>28/</sup> Petitioner's enclosed letter from Mark McGeary, KHBS-TV.

<sup>29/</sup> Petition at 2.

grants or sponsorships. The “temporary” solution offered by KHBS would provide Petitioner enough time to find additional funding via grants or sponsors, or potentially through volunteers who offer to provide captioning. Instead of working with KHBS, Petitioner dismissed the solution as “prohibitive.”<sup>30</sup> As a result, the Petition provides insufficient information for the Commission to assess the impact of adding captioning upon Petitioner’s resources. Petitioner has therefore failed to provide sufficient evidence to support a claim for exemption under the first factor.

Second factor: The impact on the operation of the provider or program owner. The Petition provides very little information to describe the impact captioning would have on Petitioner’s operations. Petitioner states that obtaining captioning from an outside source would create a “serious hardship” on its working budget.<sup>31</sup> Petitioner also states that buying captioning software would be “expensive and time consuming” and would entail more work than the church’s limited manpower could accomplish.<sup>32</sup> However, Petitioner fails to provide any supporting documentation or financial analysis for these assertions. No information substantiating information regarding why captioning would be a “hardship,” or why software would be “expensive and time consuming” is provided. Given that such factual information has not been provided, Petitioner has not provided the Commission sufficient factual basis for assessing the impact of adding captioning upon Petitioner’s operations. As a result, the Petition provides the Commission with an insufficient basis for considering whether Petitioner’s request for exemption finds support under the second factor.

Third factor: the financial resources of the provider or program owner. Commission Rule 79.1(f)(2) provides that a petition for exemption “must be supported by sufficient evidence to

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<sup>30</sup>/ *Id.*

<sup>31</sup>/ *Id.* at 1.

<sup>32</sup>/ *Id.*

demonstrate that compliance with the requirements would cause an undue burden.”<sup>33</sup>

Additionally, in determining whether the closed captioning requirements impose an undue burden, the Commission must consider the resources that the petitioner has chosen to devote to the program in the context of the overall budget and revenues of the petitioner – and not merely the cost of captioning in relation to a particular program.<sup>34</sup> Here, Petitioner has failed to provide sufficient evidence, instead relying on unsubstantiated assertions regarding the financial hardship associated with captioning.

According to its unofficial balance statement, Petitioner has an annual income of \$1,501,733.64.<sup>35</sup> However, Petitioner provides no detailed information about its financial condition or programming budget. Without more information, the Commission has no idea how Petitioner’s substantial budget is allocated and whether budgeting adjustments are a viable option. In the absence of such detailed information regarding Petitioner’s financial resources, the Petition fails to find support under the third factor.

Fourth factor: The type of operation of the provider or program owner. Petitioner provides insufficient information regarding the type of operations that it runs. In order for the Commission to determine whether the Petition is supported under the fourth factor, Petitioner should have provided detailed information regarding its operations and explained why or how complying with the closed captioning requirements would result in significant difficulty for Petitioner because of the type of operations involved. Petitioner fails to explain how the type of operation it runs provides a basis for a waiver. Petitioner’s unsubstantiated assertion that hiring additional help is not a “possibility” is not a sufficient reason for the Commission to grant a

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<sup>33</sup>/ 47 C.F.R. § 79.1(f)(2).

<sup>34</sup>/ *Implementation of Section 305 of the Telecommunications Act of 1996 – Video Programming Accessibility*, 13 FCC Rcd 3272, 3366 (1997) (“Report and Order”).

<sup>35</sup>/ Petitioner’s balance statement.

waiver. Lacking such information, the Petition fails to demonstrate that an exemption is warranted under the fourth factor.

**B. Exemption Criteria Under Section 79.1(d)(8)**

Petitioner implies that its video program is exempt from the closed captioning requirements pursuant to Section 79.1(d)(8) of the Commission's Rules. In Section 79.1(d)(8), the Commission exempted from the captioning requirements video programming "that is locally produced by the video programming distributor, has no repeat value, is of local public interest, is not news programming, and for which the 'electronic news room' technique of captioning is unavailable."<sup>36</sup> A video programming distributor is defined in Section 79.1(a)(2) as "any television broadcast station licensed by the Commission and any multi-channel video programming distributor as defined in Section 76.1000(e) of the rules, and any other distributor of video programming for residential reception that delivers such programming directly to the home and is subject to the jurisdiction of the Commission."<sup>37</sup> Commenters respectfully submit that Petitioner is not a video programming distributor as defined under Section 79.1(a)(2). The Petitioner is the producer of an individual video program, and not the owner or operator of a television station or cable network providing a transmission or network facility to distribute

**IV. CONCLUSION**

For those reasons, Petitioner's request for exemption from the closed captioning requirements is not supported by sufficient evidence to demonstrate that compliance with the requirements would cause an undue burden within the meaning of Section 713 of the Act.

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<sup>36/</sup> 47 C.F.R. § 79.1(d)(8).

<sup>37/</sup> 47 C.F.R. § 79.1(a)(1).

WHEREFORE, for the foregoing reasons, Commenters respectfully oppose grant of the Petition.

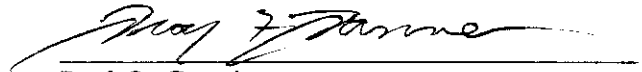
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Dated: February 21, 2006



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## CERTIFICATE OF SERVICE

I, Alice Burruss, do hereby certify that, on February 21, 2006, a copy of the foregoing Opposition of Telecommunications for the Deaf and Hard of Hearing, Inc., National Association of the Deaf, The Deaf and Hard of Hearing Consumer Advocacy Network, and the Hearing Loss Association of America to the Petition for Exemption from Closed Captioning Requirements Filed by First Baptist Lavaca Church, as filed with the Federal Communications Commission in CGB-CC-00039, was served by first class U.S. mail, postage prepaid, upon the Petitioner:

Pastor Terry Hurt  
First Baptist Lavaca  
100 west Main St.  
Lavaca, AR 72941



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